



May 16, 2019

To: Legislative and Communications Committee

From: Darrell E. Johnson, Chief Executive Officer

Kenneth D. Johnson for

Subject: Federal Legislative Status Report

Overview

Overviews are provided for two transportation-related bills. An update is also provided on potential infrastructure legislation and recent nominations to the Department of Transportation.

Recommendation

File and receive as an information item.

Discussion

H.R. 1139 (Napolitano, D-El Monte): Transit Worker and Pedestrian Protection Act

H.R. 1139 would require recipients of Federal Transit Administration (FTA) funds to develop a risk reduction program for bus operators. The bill would also require recipients who operate a rail fixed-guideway public transportation system to develop a risk reduction program for assaults on rail transit workers who aren't employed by commuter or intercity rail providers. The risk reduction program for bus operators would have to include a plan that outlines how recipients would implement assault mitigation infrastructure and technology for bus operators, de-escalation training, driver assistance technologies, measures to reduce visibility impairments, and workstation modifications to prevent ergonomic risks. Similarly, the risk reduction program for rail transit workers would require recipients to conduct a risk analysis of assaults on rail transit workers and include an implementation plan for assault mitigation. Both programs would have to be developed in cooperation with the respective collective bargaining representatives.

FTA funding recipients, including the Orange County Transportation Authority (OCTA), would be required to track and report operator assault data for inclusion

in the National Transit Database. Failure to comply with the requirements could result in potential enforcement actions from the Secretary of Transportation that include, but are not limited to, imposing more frequent reporting requirements, more frequent oversight, or withholding up to 25 percent of financial assistance under FTA's Urbanized Area Formula Funding program. In addition, the bill would authorize \$25 million in appropriations annually through 2023 for recipients to carry out the implementation plan under the bus operations safety risk reduction program. The funding would be distributed through a nationwide formula program.

This proposal comes in response to the increase in transit operator assaults nationwide. While the safety risk reduction programs may help prevent future incidents, it is worth noting that this could present significant costs for transit operators. In addition, many of the requirements are already being covered by transit agencies in existing safety planning efforts. Instead, the focus should be on expanding the level of funding beyond the proposed \$25 million annually to incentivize and assist operators to implement many of the proposed safety measures. In addition, the author should reconsider the impacts of withholding FTA funds from operators and how that could impact an operator's ability to complete capital improvements and maintain current levels of transit service.

In Orange County, OCTA has taken an active approach in protecting coach operators. OCTA is currently testing both protective barriers around coach operators and on-board surveillance monitors on buses to help deter unruly behavior. Other process and design improvements have also been implemented, such as allowing for driver seat and pedal adjustability, the installation of interior and exterior cameras, and providing training for the de-escalation of hostile situations. OCTA has also increased the presence of Transit Police Services to improve safety on key routes where assaults have occurred. The text of H.R. 1139 is included as Attachment A, and staff will continue to engage with the author to share how OCTA has already taken steps to implement many of the proposed safety measures. Staff will also continue to promote increased funding to ensure successful implementation and caution against the pitfalls associated with withholding FTA funds.

H.R. 2164 (Brownley, D-Thousand Oaks): Green Bus Act of 2019

H.R. 2164 would facilitate the adoption of zero-emission bus technology nationwide through funding incentives and a federal zero-emission purchase mandate. The legislation would provide significant funding increases for FTA bus programs, which could be used to implement zero-emission bus technology. Specifically, H.R. 2164 would increase the competitive FTA funding currently available for low- and no-emission bus technology, with escalating increases over the course of the next decade. By 2029, there would be \$900 million

available for these FTA competitive programs, which is more than double the nearly \$400 million authorized under current law. H.R. 2164 also provides significant increases to the FTA funding accounts for component assessment and cooperative research. The bill would increase component assessment funding from the current \$3 million authorization to \$5 million annually, and the research program would be increased from the \$5 million authorized in current law to \$20 million per year. These funding increases would be critical in funding the research, development, and procurement of zero-emission bus technology. Specifically, the additional funding will help OCTA comply with the Innovative Clean Transit (ICT) regulation recently adopted by the California Air Resources Board, which requires that transit agencies transition to a zero-emission bus fleet by 2040. The ICT regulation did not identify adequate funding to cover the additional costs associated with procuring zero-emission bus technology, and, as such, OCTA welcomes this bill as an opportunity to help address this substantial funding gap.

The FTA competitive funding available for buses and bus infrastructure is split between the Bus and Bus Facilities competitive grant program, authorized by Section 5339(b), and the Low or No Emission Competitive program, authorized by Section 5339(c). Under the current authorization levels, the Bus and Bus Facilities competitive program provides more than 80 percent of competitive FTA funding used for bus purposes. Over the course of the next decade, this bill would shift the breakdown of this funding so that nearly two-thirds of FTA competitive funding flows through the Section 5339(c) Low or No Emission Competitive Program, while slightly reducing the authorized amount for the Bus and Bus Facilities competitive program. H.R. 2164 also includes language directing the Secretary of Transportation to give preference to competitive grant applicants that have completed a full fleet transition plan. Since a fleet transition plan is required by the ICT regulation, this language, along with the bill's additional funding, should give OCTA and other transit agencies across California an advantage in applying for the additional funding provided by the bill. That said, the competitive funding sources increased by the bill are not limited to zero-emission bus technology. OCTA looks forward to working with the author to make this proposal as helpful as possible in complying with the ICT regulation, specifically by rewarding transit agencies that are the earliest adopters of zero-emission technology.

Like the ICT regulation, H.R. 2164 also contains a zero-emission purchase mandate. Under this bill, any bus purchase made with FTA funds would be required to be a zero-emission bus starting on October 1, 2029. This purchase mandate would go into effect after the ICT regulation's requirement that all buses purchased in California be zero-emission. As such, the purchase mandate in the bill does not contain any exceptions should zero-emission technology not be ready for full adoption by 2029. The inflexibility in this provision could put federal

law at odds with state law. The purchase mandate and other requirements in the ICT regulation are subject to change should certain circumstances come to pass. If the California regulatory structure changes before 2029, it is possible that the purchase mandate in H.R. 2164 would then conflict with California law. In addition, the bill also requires a report, to be updated annually, about the best practices surrounding the implementation of zero-emission buses, which should facilitate the transition to this new technology. As one of the states leading the transition to zero-emission technology, the experience of OCTA and other transit operators in California should inform the findings of this report. This report may also help agencies exchange information to assist with further use of the technology.

Staff recommends working with the author to ensure that, in addition to the funding provided by the bill, H.R. 2164 provides adequate safeguards for the adoption of this new technology. Like many transit agencies across California, OCTA is committed to complying with the ICT regulation. OCTA is currently preparing a comprehensive zero-emission fleet plan in preparation for the 2020 deadline in the ICT regulation. OCTA is also in the process of procuring ten hydrogen-fuel cell buses and hydrogen fueling infrastructure, and staff is also exploring ways to fund the procurement of a small number of battery-electric buses. Federal transportation policy should reward, not punish, agencies like OCTA that are leading the testing, development, and implementation of zero-emission bus technology. The text of H.R. 2164 is included as Attachment B, and staff will continue to monitor the legislation and provide further updates as necessary.

Update on Potential Infrastructure Legislation

On April 30, 2019, the President, Secretary of Transportation, Elaine Chao, and congressional leaders met at the White House to discuss a comprehensive infrastructure bill. House Speaker Nancy Pelosi (D-San Francisco) and Senate Minority Leader Charles E. Schumer (D-NY) sent a letter to the President outlining several priorities for a comprehensive infrastructure bill, which is included as Attachment C. The President and congressional leaders discussed working together on an infrastructure package, reportedly agreeing to a \$2 trillion infrastructure bill. As of the writing of this staff report, no details had been provided about the reported agreement reached at the meeting, nor was any type of legislative proposal made available. Staff will continue to monitor any developments pertaining to an infrastructure proposal and provide updates as necessary.

Nomination to the Department of Transportation

On March 28, 2019, the Senate approved the nomination of Nicole R. Nason to be the Administrator of the Federal Highway Administration by a vote of 95 to 1, making Nason the 26th Administrator of the agency. The nomination of Thelma Drake to serve as Federal Transit Administrator is still pending consideration on the Senate floor.

Summary

Overviews are provided for two transportation bills, and updates are provided on nominations to the Department of Transportation and a potential infrastructure bill.

Attachments

- A. H.R. 1139 (Napolitano, D-El Monte) Bill Language
- B. H.R. 2164 (Brownley, D-Thousand Oaks) Bill Language
- C. Letter from House Speaker Nancy Pelosi and Senate Minority Leader Charles E. Schumer to the President, dated April 29, 2019
- D. Potomac Partners DC, Monthly Legislative Report – March 2019
- E. Potomac Partners DC, Monthly Legislative Report – April 2019

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